

11.9.2007. Present: Mr.Bimal Gupta and Mr.Karan Singh Kanwar, counsel for the petitioners.
Mr.M.S. Chandel, Advocate General, with Mr.Ashutosh Burathoki, Addl.A.G., for the respondents.

By means of this writ petition, the petitioners have prayed that respondent-State be directed to acquire land comprised in Khasra No.3809/3322/2, measuring 7 biswas, belonging to petitioner No.1 and Khasra No.3810/3322/659/2, measuring 10 biswas, belonging to petitioner No.2. The land is situated in Village Nohra, Sub Tehsil Nohra Dhar, District Sirmour, H.P. The case of the petitioners is that this land has already been utilized by the State for the construction of Nohra-Devamanai Bharari Punner road.

The facts of the case are that the land was jointly owned by the petitioners alongwith their brothers Jiwan Singh and Mohinder Singh. Admittedly, the road was constructed some time in the year 1974. Now, the petitioners have set up a case that in fact a partition had been effected between the brothers as far back in the year 1974 and Khasra No.3809/3322/659/2 measuring 7 biswas fell to the share of petitioner No.1 and Khasra No.3810/3322/659/2 measuring 10 biswas fell to the share of petitioner No.2. They have, therefore, prayed that the State be directed to acquire the land.

The State, in its reply, has admitted that the road in question was constructed. However, according to the State, Khasra No.3810/3322/659, measuring 1 bigha 17 biswas was acquired by the State Government and compensation was paid to Shri Jiwan Singh as per entries in the revenue record. The State has admitted that on demarcation it has now been found

that only 6 biswas of land comprised in Khasra No.3809/3322/659/1 belonging to petitioner No.1 has been utilized for the construction of the road and the same is to be acquired. The State has submitted that acquisition proceedings could not be initiated since this land already stands mortgaged with the H.P. State Co-operative Agriculture and Rural Development Bank Ltd., Rajgarh. The State, in its reply, has clearly stated that this land is mortgaged for a consideration of Rs.3.00 lacs by the petitioner. The petitioner did not disclose this fact in the petition and even in the rejoinder filed to the reply, no proper reply has been given and it has not been specifically stated whether the land is mortgaged or not.

Keeping in view the aforesaid disputed facts, we are of the considered view that no directions can be issued in a writ petition. The petition is dismissed. The petitioners, if so advised, shall be at liberty to file a civil suit for redressal of their grievances, if otherwise permissible under law.

(Deepak Gupta), J.

September 11, 2007(trs)

(V.K. Ahuja), J.